A

HALAMAN PERDANA SDN BHD & ORS

v.

TASIK BAYANGAN SDN BHD

B

FEDERAL COURT, PUTRAJAYA
ARIFIN ZAKARIA CJ
ZULKEFLI MAKINUDIN CJ (MALAYA)
RICHARD MALANJUM CJ (SABAH & SARAWAK)
ABDULL HAMID EMBONG FCJ
C ZAINUN ALI FCJ
[CIVIL APPLICATION NO: 08-783-10-2012(B)]
20 MARCH 2014

D ***JURISDICTION:*** *Courts - Inherent jurisdiction - Federal Court - Application to review and set aside decisions of Court of Appeal and Federal Court - Whether jurisdiction of Federal Court under r. 137 Rules of the Federal Court 1995 limited to reviewing its own decisions - Whether Federal Court has jurisdiction to review decisions of other courts - Whether decision in leave application tainted with bias - Whether* E *allegation of bias should have been raised at earliest opportunity available instead of for review - Whether there was basis to invoke r. 137 - Whether fit and proper case to exercise jurisdiction*

F ***CIVIL PROCEDURE:*** *Jurisdiction - Federal Court - Inherent jurisdiction - Application to review and set aside decisions of Court of Appeal and Federal Court - Whether jurisdiction of Federal Court under r. 137 Rules of the Federal Court 1995 limited to reviewing its own decisions - Whether Federal Court has jurisdiction to review decisions of other courts - Whether decision in leave application tainted with bias -* G *Whether allegation of bias should have been raised at earliest opportunity available instead of for review - Whether there was basis to invoke r. 137 - Whether fit and proper case to exercise jurisdiction*

The applicants, by way of notice of motion ('the motion'), pursuant to s. 96 of the Courts of Judicature Act 1964 ('CJA') H and/or r. 137 of the Rules of the Federal Court 1995 ('r. 137'), sought to review the decisions of the Court of Appeal and/or of this court. The background facts were that the applicants had filed an appeal to the Court of Appeal ('COA') before a panel of judges, including Justice Datuk Wira Low Hop Bing ('the COA I Judge'). The applicants then filed a leave application to this court

which was premised entirely on the issues as pleaded before the High Court and the COA. While the leave application was pending, the applicants filed a review application in the COA ('COA review application') praying for an order that the COA judgment should be reviewed on the ground that there was a real danger of bias on the part of the COA judge when he failed to disclose to the parties that there was an unsettling degree of familiarity between the COA judge and the director of the respondent. At the commencement of the hearing of the leave application, the applicants made an attempt to seek an adjournment in order to allow the COA review application to be determined first, which was refused. The court then dismissed the leave application. Subsequently, the COA review application came up for hearing where the respondent raised a point on jurisdiction contending that the COA had no jurisdiction to review its own decision. Faced with such objections, the applicants applied to withdraw the COA review application. The COA thus struck out the COA review application. The applicants herein prayed for the following orders, *ie*, (a) that the decision of the Court of Appeal in dismissing the applicants' appeal against the decision of the High Court be set aside and the appeal be reheard ('prayer A'); and (b) that the decisions of the Federal Court *vide* the notice of motion filed by the applicants in dismissing the applicants' application for adjournment of the hearing of the leave application ('first decision') and in dismissing the leave application ('second decision') be set aside and the leave application be reheard ('prayer B'). The issues that arose for consideration were: (i) whether this court had the jurisdiction to entertain the motion; and (ii) whether on the facts and circumstances of this case, this was a proper case to exercise such jurisdiction.

Held (dismissing motion with costs)
Per Richard Malanjum CJ (Sabah & Sarawak) delivering the judgment of the court:

(1) This court has the jurisdiction to review its own decision in order to prevent injustice or to prevent an abuse of the process of the court (*Dato' See Teow Chuan & Ors v. Ooi Woon Chee & Ors And Another Appeal*, refd). However, this court has no jurisdiction under r. 137 to review decisions of other courts including that of the Court of Appeal (*Sharikat Galian Razak*

Sdn Bhd lwn. Magical Capital Sdn Bhd, refd). Notwithstanding the foregoing, where the COA is the apex court of any particular case, in view of s. 87 of the CJA, it is also clothed with such inherent power (*Harcharan Singh Piara Singh v. PP*, refd). As such, the COA review application was an incompetent application *ab initio*. The COA was not the apex court in this case. Thus, there was no basis in law for the applicants to complain that this court had erred in not allowing an adjournment of the leave application pending the disposal of the COA review application. Hence, prayer A of the motion was a non-starter and an abuse of the process of the court. It was therefore refused. (paras 16-18)

(2) The grant or refusal of an adjournment was entirely an exercise of discretion by the learned judges who heard the leave application. It was obviously not within the ambit of r. 137. Granting the adjournment due to the pending COA review application would have been an exercise in futility. Further, the complaint was primarily based on bias, a ground in which some of the earlier applications under r. 137 succeeded. But, any allegation of bias must be related to the decisions in the leave application and not the COA judgment. To succeed in the motion, the applicants must show that the decisions in the leave application was tainted with bias in the sense that when it was made, there was actual or a real danger of bias. (paras 21, 22 & 26)

(3) The applicants in the motion only averred that their fundamental right to a fair and proper hearing was affected due to a real danger of bias on the part of the COA judge who was the presiding judge of the bench that heard and dismissed the appeal. When the leave application was heard, the applicants already made the allegation of bias against the COA judge in their COA review application. There was nothing to prevent them from submitting the allegation of bias before the learned judges who heard the leave application. Unfortunately, they failed to do so. The allegation of bias should have been raised at the earliest opportunity available instead of coming back for review (*Abdol Mulok Awang Damit v. Perdana Industri Holdings Bhd*, refd). (paras 27-29)

(4) The jurisdiction of this court under r. 137 is limited to reviewing its own decision. The basis to do so is also very stringent. It may only allow a review of its own decision in order to prevent injustice or to prevent an abuse of the process of the court. Since in the motion there was no allegation of bias or any reason advanced to impugn the decision of this court dismissing the leave application, there was therefore no basis to invoke the power under r. 137. Thus, prayer B was also refused. (paras 31 & 33)

Bahasa Malaysia *Translation Of Headnotes*

Pemohon-pemohon, melalui notis usul ('usul'), di bawah s. 96 Akta Mahkamah Kehakiman 1964 ('AMK') dan/atau k. 137 Kaedah-Kaedah Mahkamah Persekutuan 1995 ('k. 137'), memohon untuk menyemak semula keputusan Mahkamah Rayuan dan/atau mahkamah ini. Fakta latar belakang adalah bahawa pemohon telah memfailkan rayuan kepada Mahkamah Rayuan ('MR') di hadapan panel hakim, termasuk Yang Arif Datuk Wira Low Hop Bing ('Hakim MR'). Pemohon-pemohon kemudiannya memfailkan permohonan kebenaran kepada mahkamah ini berdasarkan isu-isu yang diplidkan di hadapan Mahkamah Tinggi dan MR. Sementara permohonan kebenaran masih belum diputuskan, pemohon-pemohon telah memfailkan permohonan menyemak semula di MR ('permohonan semakan semula MR') menuntut satu perintah bahawa penghakiman MR harus disemak semula atas alasan bahawa terdapat bahaya berat sebelah pada pihak hakim MR apabila beliau gagal mendedahkan kepada pihak-pihak terlibat bahawa terdapat hubungan di tahap yang tidak menyenangkan di antara Hakim MR dan pengarah responden. Pada permulaan perbicaraan permohonan kebenaran, pemohon telah mencuba untuk mendapatkan penangguhan supaya permohonan semakan semula MR boleh diputuskan terlebih dahulu, tetapi ia ditolak. Selepas itu, mahkamah telah menolak permohonan kebenaran. Kemudian, permohonan semakan semula telah dibicarakan di mana responden membangkitkan isu berkenaan bidang kuasa dengan menghujahkan bahawa MR tidak mempunyai bidang kuasa untuk menyemak semula keputusannya sendiri. Berhadapan dengan bantahan-bantahan itu, pemohon-pemohon memohon untuk menarik balik permohonan semakan semula MR. MR, oleh itu, membatalkan permohonan semakan semula MR. Pemohon-pemohon di sini menuntut perintah-perintah berikut, iaitu,

(a) bahawa keputusan MR menolak rayuan pemohon-pemohon terhadap keseluruhan keputusan Mahkamah Tinggi diketepikan dan rayuan dibicarakan semula ('tuntutan A'); dan (b) bahawa keputusan-keputusan Mahkamah Persekutuan melalui notis usul yang difailkan oleh pemohon-pemohon dalam menolak permohonan pemohon untuk penangguhan perbicaraan permohonan kebenaran ('keputusan pertama') dan menolak permohonan kebenaran ('keputusan kedua') diketepikan dan permohonan kebenaran dibicarakan sekali lagi ('tuntutan B'). Isu-isu yang dibangkitkan untuk pertimbangan adalah (i) sama ada mahkamah ini mempunyai bidang kuasa untuk memutuskan usul ini; dan (ii) sama ada berdasarkan fakta dan keadaan kes ini, ia adalah kes yang berpatutan untuk melaksanakan bidang kuasa sebegini.

Diputuskan (menolak usul dengan kos)

Oleh Richard Malanjum HB (Sabah & Sarawak) menyampaikan penghakiman mahkamah:

(1) Mahkamah ini mempunyai bidang kuasa untuk menyemak semula keputusannya sendiri supaya dapat mengelakkan ketidakadilan atau untuk mengelakkan penyalahgunaan proses mahkamah (*Dato' See Teow Chuan & Ors v. Ooi Woon Chee & Ors And Another Appeal*, dirujuk). Walau bagaimanapun, mahkamah ini tidak mempunyai bidang kuasa di bawah k. 137 untuk menyemak semula keputusan mahkamah lain termasuk Mahkamah Rayuan (*Sharikat Galian Razak Sdn Bhd lwn. Magical Capital Sdn Bhd*, dirujuk). Walaupun begitu, di mana Mahkamah Rayuan adalah mahkamah tertinggi bagi sesuatu kes tertentu, berdasarkan s. 87 AMK, ia mempunyai kuasa sedia ada (*Harcharan Singh Piara Singh v. PP*, dirujuk). Oleh itu, permohonan semakan semula MR adalah permohonan *ab initio* yang tidak kompeten. MR bukan mahkamah yang tertinggi dalam kes ini. Oleh itu, tiada asas undang-undang untuk pemohon-pemohon membuat aduan bahawa mahkamah ini telah terkhilaf kerana tidak membenarkan penangguhan permohonan kebenaran sementara menunggu pelupusan permohonan semakan semula MR. Maka, tuntutan A tidak sepatutnya dimulakan dan adalah satu penyalahgunaan proses mahkamah. Dengan itu, ia telah ditolak.

(2) Pemberian atau penafian penangguhan adalah perlaksanaan budi bicara sepenuhnya oleh yang arif hakim yang mendengar permohonan kebenaran. Ia jelas tidak terangkum dalam

lingkungan k. 137. Membenarkan penangguhan berdasarkan permohonan semakan semula MR akan menjadi usaha sia-sia. Tambahan, aduan adalah berdasarkan berat sebelah, satu alasan yang berjaya digunakan dalam permohonan-permohonan sebelum ini di bawah k. 137. Tetapi, sebarang dakwaan berat sebelah mesti mempunyai kaitan dengan keputusan dalam permohonan kebenaran dan bukan penghakiman MR. Untuk berjaya dalam usul ini, pemohon-pemohon harus menunjukkan bahawa keputusan dalam permohonan kebenaran dicemari dengan berat sebelah dalam erti kata bahawa apabila ia dibuat, terdapat bahaya berat sebelah yang benar dan nyata.

(3) Pemohon-pemohon dalam usul hanya menegaskan bahawa hak asasi mereka kepada perbicaraan yang adil dan saksama telah terjejas kerana terdapat bahaya berat sebelah yang nyata dari pihak Hakim MR yang merupakan hakim yang mempengerusikan perbicaraan dan menolak rayuan. Apabila permohonan kebenaran dibicarakan, pemohon telah membuat dakwaan berat sebelah terhadap Hakim MR dalam permohonan semakan semula MR. Tiada apa-apa yang menghalang mereka daripada mengemukakan dakwaan berat sebelah di hadapan yang arif hakim yang mendengar permohonan kebenaran. Malangnya, mereka gagal berbuat demikian. Dakwaan berat sebelah harus dibangkitkan seawal-awalnya dan bukan dibawa untuk semakan (*Abdol Mulok Awang Damit v. Perdana Industri Holdings Bhd*, dirujuk).

(4) Budi bicara mahkamah ini di bawah k. 137 adalah terhad kepada mengkaji keputusannya sendiri. Asas untuk berbuat demikian juga sangat ketat. Ia hanya boleh membenarkan kajian semula keputusannya sendiri demi mengelakkan ketidakadilan atau penyalahgunaan proses mahkamah. Oleh kerana dalam usul tiada dakwaan berat sebelah atau apa-apa alasan untuk mempersoalkan keputusan mahkamah dalam menolak permohonan kebenaran, maka tiada asas untuk menggunakan kuasa di bawah k. 137. Oleh itu, tuntutan B juga ditolak.

Case(s) referred to:

Abdol Mulok Awang Damit v. Perdana Industri Holdings Bhd [2003] 3 CLJ 497 CA ***(refd)***

Dato' Abu Hasan Sarif v. Dato' Dr Abd Isa Ismail [2012] 2 CLJ 649 FC ***(refd)***

Dato' See Teow Chuan & Ors v. Ooi Woon Chee & Ors And Another Appeal [2013] 4 CLJ 901 FC ***(refd)***

A *David Wong Hon Leong v. Noorazman Adnan [1995] 4 CLJ 155 CA* ***(refd)***
Harcharan Singh Piara Singh v. PP [2011] 6 CLJ 625 FC ***(refd)***
Metramac Corporation Sdn Bhd v. Fawziah Holdings Sdn Bhd; Tan Sri Halim Saad & Che Abdul Daim Hj Zainuddin (Interveners) [2007] 4 CLJ 725 FC ***(refd)***
B *Sharikat Galian Razak Sdn Bhd lwn. Magical Capital Sdn Bhd [2013] 9 CLJ 141 FC* ***(refd)***
Tradium Sdn Bhd v. Zain Azahari Zainal Abidin & Anor [1996] 2 CLJ 270 CA ***(refd)***
Yoong Sze Fatt v. Pengkalen Securities Sdn Bhd [2010] 1 CLJ 484 CA ***(refd)***

C
Legislation referred to:
Courts of Judicature Act 1964, ss. 87, 96
Rules of the Federal Court 1995, r. 137

For the applicants - Malik Imtiaz Sarwar (Gobind Singh Deo, Tan Jee Tjun
D *& Pavendeep Singh with him); M/s Thomas Philip*
For the respondent - K Kirubakaran (Max Yong & S Malar with him); M/s Kiru & Yong

[Review of Federal Court Civil Application No: 08(F)-6-01-2012(B)]

E *Reported by Suhainah Wahiduddin*

JUDGMENT

F **Richard Malanjum CJ (Sabah & Sarawak):**

Introduction

[1] By way of notice of motion dated 25 October 2012 ('the motion') the applicants, pursuant to 's. 96 of the Courts of
G Judicature Act 1964 and/or r. 137 ('r. 137') of the Rules of the Federal Court 1995 and/or the inherent jurisdiction of this Honourable Court', are seeking for the review of the decisions of the Court of Appeal and/or of this court. They pray for the following orders:

H
(a) 'That the decision of the Court of Appeal dated 8 December 2011 (in Civil Appeal No. B-02-338-2011 ('the appeal') which dismissed the applicants' appeal against the whole of the decision of the Shah Alam High Court given on 29 December
I 2010 (in Civil Suit No. MT6(5)-22-35-2002) be set aside and the appeal be reheard;

(b) Further or alternatively, that the decisions of the Federal Court on 20 September 2012 *vide* the notice of motion filed by the applicants in Civil Application No. 08(f)-6-01/2012(B) ('the leave application'):

(i) in dismissing the applicants' counsel's application for adjournment of the hearing of the leave application ('first decision'); and

(ii) in dismissing the leave application ('second decision');

be set aside and the leave application be reheard;

(c) That the Court of Appeal Order dated 7 December 2011 and the Shah Alam High Court judgment dated 29 December 2010 be stayed pending the disposal of this application; and

(d) Any further and/or other order this Honourable Court deems fit and/or otherwise appropriate.

[2] While the motion did not categorise the prayers as above, for convenience we have done so in this judgment.

[3] The application was supported by an affidavit of Tan Sri Dato' Abdul Aziz bin Abdul Rahman (No. K/P: 331003-03-5329).

[4] We heard the arguments and adjourned to consider the points submitted. We have reached our unanimous decision and this is therefore the judgment of the court.

Background Facts

[5] In order to properly understand the grievances raised by the applicants it is helpful to summarise the background facts.

[6] The applicants were the defendants in the Shah Alam High Court Suit No. MT6(5)-22-35-2002. The High Court adjudged the matter in favour of the respondent on 29 December 2010.

[7] Dissatisfied with the High Court decision, the applicants filed an appeal to the Court of Appeal ('COA'). During the hearing of the appeal on 8 December 2011 the panel of judges of the COA comprised of Mr Justice Datuk Wira Low Hop Bing (presiding), Mr Justice Datuk Abdul Wahab Patail and Mr Justice Dato' Sri

A Abu Samah bin Nordin dismissed the appeal ('the COA judgment'). Mr Justice Datuk Wira Low Hop Bing ("the COA judge") wrote the COA judgment.

[8] The applicants then filed the leave application on 4 January B 2012 to this court. The leave application was premised entirely on the issues as pleaded before the High Court and the COA.

[9] While the leave application was pending, the applicants filed a review application in the COA on 3 May 2012 ('COA review application') praying for an order that the COA judgment should C be reviewed on the ground that there was a real danger of bias on the part of the COA judge when he failed to disclose to the parties that there was 'an unsettling degree of familiarity' between the COA judge and the director of the respondent by the name of Dato' Peter Kuah ('Kuah'). The applicants alleged that there D were series of text messages *via* short messaging service ('SMS') exchanged between the COA judge and Kuah and also between the COA judge and another person by the name of Ms Ooi Suan Kim ('Ooi'). These exchanges occurred between 2 December 2011 and 5 December 2011 that is, before the appeal was heard E and dismissed on 8 December 2011.

[10] Prior to the hearing of the COA review application, the leave application was fixed for hearing on 20 September 2012. On 7 September 2012, the then solicitors for the applicants wrote to F the Registry of this court to ask for an adjournment on the basis that the COA review application was still pending. The solicitors for the respondent opposed the request as contained in their letter dated 7 September 2012. In turn, the Registry of this court *vide* its letter dated 12 September 2012 declined to grant the request. G

[11] On 14 September 2012 the solicitors for the applicants wrote again to the Registry of this court seeking for an adjournment of the hearing of the leave application on the basis that the COA review application had been fixed on 16 October 2012. In its H letter dated 18 September 2012 the respondent was opposed to any adjournment. By its letter dated 19 September 2012 the Registry of this court again declined to grant the request.

[12] At the commencement of the hearing of the leave application I learned counsel for the applicants again made another attempt to seek for an adjournment in order to allow the COA review

application be determined first. The request was again refused and the hearing proper was ordered to proceed. After hearing the parties this court dismissed the leave application.

[13] On 16 October 2012, the COA review application came up for hearing. Learned counsel for the respondent raised a point on jurisdiction contending that the COA had no jurisdiction to review its own decision. Faced with such objection, learned counsel for the applicants applied to withdraw the COA review application with no order as to costs. The COA thus struck out the COA review application.

The Motion

[14] In our view there are only two basic questions to consider in the motion, namely, whether this court has the jurisdiction to entertain it and if so, whether on the facts and circumstances of this case including the arguments submitted by learned counsel for the parties, this is a proper case to exercise such jurisdiction.

Jurisdiction Under r. 137

(i) Prayer A

[15] In respect of the first question we are of the view that it is now settled law that this court has the jurisdiction to review its own decision in order 'to prevent injustice or to prevent an abuse of the process of the court'. This court in its recent judgment ruled that *'the inherent power of the court to review its decision as declared in r. 137 is a necessary power which is inbuilt or intrinsic in the court, as the court of justice. This power may be equated to the powers of the courts to dismiss an action for want of prosecution or to the power of court to strike out any pleading or indorsement of any writ in the action under the Rules of Court 2012. This inherent power is derived from the inherent jurisdiction of the court which is to do justice and to prevent any abuse of process. This power springs not from legislation but from the nature and constitution of the court as a dispenser of justice. And this inherent power can only be taken away by express provision in any written law*.' (See: *Dato' See Teow Chuan & Ors v. Ooi Woon Chee & Ors And Another Appeal* [2013] 4 CLJ 901; [2013] 4 MLJ 351). (emphasis added).

[16] But while this court in *Dato' See Teow Chuan & Ors v. Ooi Woon Chee & Ors and Other Applications (supra)* reaffirmed the principle that it has jurisdiction to review its own decisions, it was

A also made clear by this court in another decision that it has no jurisdiction under r. 137 to review decisions of other courts including that of the Court of Appeal. Indeed it was held that 'leave for the application of r. 137 to review the decision of the Court of Appeal would result in the abuse of process of the court' B (See: *Sharikat Galian Razak Sdn Bhd lwn. Magical Capital Sdn Bhd* [2013] 9 CLJ 141). Thus, the decision in *Dato' Abu Hasan Sarif v. Dato' Dr Abd Isa Ismail* [2012] 2 CLJ 649 FC was ruled to have been decided *per incuriam*.

C **[17]** Notwithstanding the foregoing, it remains the law that 'where the Court of Appeal is the apex court of any particular case in view of s. 87 of the Courts of Judicature Act 1964 ('CJA') then it is also clothed with such inherent power'. (See: *Harcharan Singh Piara Singh v. PP* [2011] 6 CLJ 625).

D **[18]** As such, the COA review application was an incompetent application *ab initio*. The COA was not the apex court in this case. There was therefore no basis in law for the applicants to complain that this court erred in not allowing an adjournment of the leave application pending the disposal of the COA review E application.

[19] Hence, prayer A of the motion is a non-starter and an abuse of the process of the court. It is therefore refused.

F *(ii) Prayer B*

[20] We now turn to prayer B of the motion. Basically it is for the rehearing of the leave application. But in doing so the applicants sought to impugn the two decisions of the learned judges of this court who heard the leave application. The first G decision was the refusal to grant an adjournment and the second decision was the dismissal of the leave application itself.

[21] As regards the prayer to set aside the first decision we are of the view that it was obviously not within the ambit of r. 137. H The grant or refusal of an adjournment was entirely an exercise of discretion by the learned judges who heard the leave application.

[22] At any rate in view of the principle reiterated in *Sharikat Galian Razak Sdn Bhd v. Magical Capital Sdn Bhd (supra)* granting I the adjournment due to the pending COA review application would have been an exercise in futility.

[23] In respect of the second decision, in order to succeed in setting it aside the applicants must overcome the threshold requirement of r. 137.

[24] The law governing the application of r. 137 is now very well settled. In *Dato' See Teow Chuan & Ors v. Ooi Woon Chee & Ors And Other Applications (supra)* the learned Chief Justice in delivering the judgment of this court reaffirmed the view that the inherent power as declared by r. 137 'can only be exercised in special or exceptional circumstances'. It was further said that 'the court is mindful of the fact that this inherent jurisdiction must be exercised with circumspection in order to prevent any abuse of the same.' And 'in no circumstances whatsoever, this jurisdiction should be used as an avenue of further appeal'.

[25] The learned Chief Justice went on to say this at paras. 17 and 18 of the judgment:

> [17] Zaki Tun Azmi PCA (as he then was) in *Asean Securities (supra)* laid down some of the circumstances in which this discretion may be exercised. However, he intimated that the list is not intended to be exhaustive and it is open to the Court to determine such application on a case by case basis.
>
> [18] From the authorities, it would appear that an application may be allowed on the grounds of:
>
> (a) bias (*Taylor & Anor v. Lawrence & Anor (supra)*);
>
> (b) coram failure (*Gurbachan Singh s/o Bagawan Singh & Anor. v. Vellasamy s/o Ponnusamy*) *(supra)*;
>
> (c) fraud or suppression of material evidence (*MGG Pillai v. Tan Sri Dato' Vincent Tan Chee Yioun* [2002] 3 CLJ 577; *Re Uddin (supra)*); or
>
> (d) procedural unfairness (*Cassell & Co Ltd v. Broome (No 2)* [1972] 2 All ER 849n, [1972] AC 1136).'

[26] Reverting to the motion the complaint is primarily based on bias, a ground in which some of the earlier applications under r. 137 succeeded. But any allegation of bias must be related to the decisions in the leave application and not the COA judgment. Simply put, to succeed in the motion the applicants must show

A that the decisions, in particular the second decision in the leave application, was tainted with bias in the sense that when it was made there was actual or a real danger of bias.

[27] The applicants in the motion only averred that their
B fundamental right to a fair and proper hearing was affected due to a real danger of bias on the part of the COA judge who was the presiding judge of the Bench that heard and dismissed the appeal.

C **[28]** Meanwhile, it could hardly be disputed that when the leave application was heard the applicants had already made the allegation of bias against the COA judge in their COA review application.

[29] And there was nothing to prevent them from submitting the
D allegation of bias before the learned judges who heard the leave application. Unfortunately they failed to do so. The allegation of bias should have been raised at the earliest opportunity available instead of coming back for review. (See: *David Wong Hon Leong v. Noorazman Adnan* [1995] 4 CLJ 155; [1995] 3 MLJ 283; *Abdol*
E *Mulok Awang Damit v. Perdana Industri Holdings Bhd* [2003] 3 CLJ 497; [2003] 4 MLJ 441; *Yoong Sze Fatt v. Pengkalen Securities Sdn Bhd* [2010] 1 CLJ 484; [2011] 4 MLJ 805; *Tradium Sdn Bhd v. Zain Azahari Zainal Abidin & Anor* [1996] 2 CLJ 270; [1995] 1 MLJ 668).

F **[30]** The applicants could not now say that the decision to dismiss the leave application should be impugned on the ground of bias. In fact there was no allegation of bias against the decision to dismiss the leave application or against any of the judges who
G heard the leave application.

[31] As discussed above the jurisdiction of this court under r. 137 is limited to reviewing its own decision. The basis to do so is also very stringent. It may only allow a review of its own
H decision in order 'to prevent injustice or to prevent an abuse of the process of the court'.

[32] Some of the instances when this court has allowed the review of its own earlier decisions are listed above. Bias is one of them. (See: *Metramac Corporation Sdn Bhd v. Fawziah Holdings Sdn*
I *Bhd; Tan Sri Halim Saad & Che Abdul Daim Hj Zainuddin (Interveners)* [2007] 4 CLJ 725; [2007] 5 MLJ 501).

[33] Since in the motion there is no allegation of bias or any reason advanced to impugn the decision of this court dismissing the leave application there is therefore no basis to invoke the power under r. 137. In short, the motion failed to meet the threshold requirement of r. 137. Thus, prayer B is also refused.

Conclusion

[34] Accordingly the motion is dismissed with costs.